

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RAUL MONTES,)	
)	
Petitioner)	
)	Civil Action No.
v.)	04cv11748-JLT
)	
IMMIGRATION AND NATURALIZATION)	
SERVICE ¹)	
)	
Respondent ²)	

RETURN AND MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO DISMISS
OR TRANSFER IN THE ALTERNATIVE

Petitioner, a native and citizen of Cuba, was released from his detention, in Texas, by the former Immigration and Naturalization Service on December 18, 2001.

Petitioner now resides in Miami, Florida, at the address given on his petition, and any enforcement of petitioner's order of exclusion and deportation³, is the official

¹ The Immigration and Naturalization Service of the United States Department of Justice was "abolished" by section 471 of the Homeland Security Act of 2002, Pub. L. 107-296, tit. IV, subtit. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002) ("HSA"). Most of the interior enforcement functions of the former INS were transferred to the Department of Homeland Security ("DHS"), Directorate of Border and Transportation Security, Bureau of Immigration and Customs Enforcement. These changes were effective March 1, 2003.

² The officer responsible for enforcing the order of exclusion and deportation in this case is the Bureau of Immigration and Customs Enforcement Field Office Director for Detention and Removal Operations in Miami, Florida, within whose jurisdiction petitioner resides.

³ Petitioner was ordered excluded and deported by an Immigration Judge on February 5, 1998, and petitioner's appeal

responsibility of the Bureau of Immigration and Customs Enforcement ("ICE") Field Office Director ("FOD") for Detention and Removal Operations in Miami, Florida, within whose jurisdiction petitioner resides.

Accordingly, this district of Massachusetts Court lacks in personam jurisdiction over the ICE Field Office Director in Miami, Florida, who is responsible for enforcing petitioner's exclusion and deportation order and to whom any stay or injunctive order relating to the enforcement of the order of exclusion and deportation against petitioner would necessarily be directed.

The Court therefore should either dismiss this action under Fed. R. Civ. P. Rule 12(b)(2) for lack of in personam jurisdiction over the proper respondent, or transfer this case to the United States District Court for the Southern District of Florida, Miami Division.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: s/Frank Crowley
FRANK CROWLEY
Special Assistant U.S. Attorney
Department of Homeland Security
P.O. Box 8728
J.F.K. Station
Boston, MA 02114
(617) 565-2415

of that order was dismissed by the Board of Immigration Appeals on September 29, 1998.

CERTIFICATE OF SERVICE

I hereby certify that I caused true copy of the above document to be served upon pro se petitioner by mail on August 17, 2004.

s/Frank Crowley

FRANK CROWLEY

Special Assistant U.S. Attorney

Department of Homeland Security

P.O. Box 8728

J.F.K. Station

Boston, MA 02114